IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1881 of 2003

to

FIRST APPEALNo 1886 of 2003

with

CIVIL APPLICATION No 6876 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

THE ORIENTAL INSURANCE CO. LTD.

Versus

NASIR MOHMAD KHALIFA

Appearance:

1. First Appeal No. 1881 of 2003

MR RAJNI H MEHTA for Petitioner No. 1

MS MEGHA JANI for Respondent No.3

2. Civil Application No. 6876 of 2003

MR RAJNI H MEHTA for Petitioner No. 1
MS MEGHA JANI for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 07/10/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE KSHITIJ R.VYAS)

Admit. Ms. Megha Jani waives service for respondent no.3.

At the request of Mr.Mehta, learned Counsel appearing for the appellant, respondents no. 1,2, 4 and 5 are ordered to be deleted.

With the consent of learned Counsel appearing for the parties, these appeals are taken up for final hearing today and disposed of by this common judgment.

The appellant- Oriental Insurance Co.Ltd. has filed these six appeals under section 173 of the Motor Vehicles Act challenging the judgment and award dated 30.4.2003 passed by the Motor Accident Claims Tribunal (Auxi) Navsari in MACP Nos. 174 to 179 and 181 of 1996 (MACP No.181 of 1996 was treated as the main petition).

On going through the judgment, it appears that seven claim petitions were filed in respect of the accident alleged to have taken place on 2.12.1995 when Matador No. GJ 15B 5562 wherein the claimants who were travelling, collided with truck no. GU 1U 5509 coming from the opposite direction. It appears that the claim petitions were filed by the injured persons for the injuries suffered by them. In fact, it is the contention of the claimants that the accident was caused due to sole negligence of the driver of the truck. In the written statement filed by the appellant- Oriental Insurance Company, while disputing various allegations, it was specifically contended that the accident was caused due to sole negligence of the truck driver and, therefore, it was contended that there was no qeustion of any award being passed against the appellant.

The Tribunal, after considering oral as well as documentary evidence on record, partly allowed the claim applications holding the appellant Insurance Company as well as respondent no.3, the National Insurance Company jointly and severally liable to pay the amount of compensation to the claimants.

Learned Counsel Mr. Mehta appearing for the appellant submitted that the Tribunal, in the instant

case, has recorded a specific finding that the accident was caused due to sole negligence of the truck driver. However, without any explanation, the Tribunal has directed that the appellant would be jointly and severally liable to satisfy the award. In the submission of the learned Counsel, once the driver of the truck is found to be solely negligent, there is no question of appellant being held jointly and severally liable to satisfy the award. We see substance in the submission of learned Counsel for the appellant Oriental Insurance Co.Ltd.

The Issue no.1 raised by the Tribunal which is common in all the claim petitions, reads as under:

"Whether the applicant proves that the Opponent No.1 caused him injury/ disability by rash and negligent driving of vehicle bearing Truck No. GJ 1U 5509 dashed with MatadorTempo No. GJ15T 5562 ? "

After appreciating the evidence on record, the Tribunal recorded a finding that the accident was caused due to sole negligence of the truck driver. In spite of this finding, the Tribunal has held that the appellant as well as the respondent no.3 were jointly and severally liable to satisfy the award. In our opinion, this is an obvious error committed by the Tribunal. The ultimate direction given by the Tribunal is contrary to the finding on the question of negligence recorded by the Tribunal.

Ms.Megha Jani appearing for respondent no.3 National Insurance Co.Ltd. supports the finding recorded by the Tribunal. In this view of the matter, we allow all the appeals on the question of negligence on the part of the driver of Matador. Consequently, we accept the finding recorded by the Tribunal that the truck driver was solely responsible for causing the accident in question and, therefore, the respondent no.3 National Insurance Company which is the insurer of the said vehicle is liable to pay the amount of compensation to the claimants of claim petitions.

All the appeals are allowed to the aforesaid extent only. No order as to costs.

The amount deposited by the appellant Insurance Company with the Registry shall be refunded.

In view of the order passed in main appeals, Civil Application accordingly stands disposed of.

We have permitted the appellant to delete respondents claimants as we wanted to decide the question as to which insurance company is liable to pay compensation to the claimants and that too, in absence of claimants. Office is directed to inform the concerned respondents claimants in all the appeals by sending a

copy of this judgment.

(Kshitij R.Vyas,J.)(Akshay H.Mehta,J.)

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